

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**In Re:**

**AREDIA® AND ZOMETA® PRODUCTS  
LIABILITY LITIGATION**

**(MDL No. 1760)**

**This Document Relates to:  
3:06-cv-00960 (*Waller*)**

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**No. 3:06-MD-1760**

**Judge Campbell/Brown**

**REPORT AND RECOMMENDATION**

Defendant Novartis Pharmaceuticals Corporation (NPC) filed a motion on August 28, 2013 (MDL Doc. 6933; Related Case 59) to dismiss this Group 1 case for failure to respond to NPC's earlier motion to dismiss filed July 19, 2013 (MDL Doc. 6836; Related Case 53).

The Magistrate Judge entered a Report and Recommendation (R&R) in this case and thirteen others on September 23, 2013 recommending that NPC's motions to dismiss be denied in all of those cases. (MDL Doc. 7011; Related Case 60) The District Judge adopted and approved the R&R on November 5, 2013. (MDL Doc. 7107; Related Case 70)

NPC's August 28, 2013 motion to dismiss (MDL Doc. 6933; Related Case 59) seeks to dismiss this case solely because plaintiff did not respond to its original July 19, 2013 motion to dismiss (MDL Doc. 6836; Related Case 53). Apart from arguing that "[p]laintiff should not be permitted to . . . avoid NPC's motion to dismiss," NPC's second motion to dismiss does not argue/raise any new grounds for relief. It simply seeks dismissal because plaintiff did not respond to NPC's now-denied dispositive motion. Inasmuch as the District Judge has denied the motion to dismiss on which NPC's second motion to dismiss is based, the Magistrate Judge recommends that NPC's second motion to dismiss (MDL Doc. 6933; Related Case 59) be **DENIED** as well.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days

from service of this R&R within which to file with the District Court any written objections to the proposed findings and recommendations made herein. Any party opposing shall have fourteen (14) days from receipt of any objections filed regarding this R&R within which to file a response to said objections. Failure to file specific objections within fourteen (14) days of receipt of this R&R may constitute a waiver of further appeal of this R&R. *Thomas v. Arn*, 474 U.S. 140, *reh'g denied*, 474 U.S. 1111 (1986).

**ENTERED** the 13<sup>th</sup> Day of November, 2013.

/s/Joe B. Brown  
Joe B. Brown  
United States Magistrate Judge